

ORDER AMENDING AND CREATING A RULE

Office of the Commissioner of Insurance – Agency 145

The Office of the Commissioner of Insurance orders the following rule to amend s. Ins 3.17 (6) (b) and 8 (b); and to create s. Ins 3.17 (6) (bm) and (8) (bm), Wis. Adm. Code, relating to the reserve standards for accident and sickness insurance and affecting small business.

The statement of scope for this rule SS: 113-18, was approved by the Governor on November 1, 2018, published in Register No. 755A3 on November 19, 2018, and approved by the Deputy Commissioner on December 12, 2018. The proposed rule was approved by the Governor on February 27, 2020, to submit to the legislature and was submitted to the legislature on March 4, 2020. The rule passed through committees and JCRAR on May 22, 2020 with no action taken.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

Statutes interpreted:

Sections 623.04, 623.06 (8m), Stats.

Statutory authority:

Sections 601.41 (3), 601.42 (1g), 623.04, 623.06 (8m), Stats.

Explanation of OCI's authority to promulgate the proposed rule under these statutes:

Section 623.04, Stats., requires the Commissioner to promulgate any rules "specifying the liabilities required to be reported in the financial statements submitted under s. 601.42 (1g) (a), Stats., and the methods of valuing them. In the case of life insurance such methods shall be consistent with s. 623.06, Stats."

Additionally, s. 601.41 (3) (a), Stats., grants the Commissioner "rule-making authority under s. 227.11 (2), Stats." Further, s. 601.42 (1g), Stats., gives the Commissioner the authority to require from those subject to regulation, among other things, "statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time." Finally, s. 601.42 (2), Stats., states that [T]he commissioner may prescribe forms from the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports."

Related statutes or rules:

Sections 601.41 (3), 601.42 (1g), 623.04, 623.06 (8m), Stats.

The plain language analysis and summary of the proposed rule:

The proposed rule permits insurers writing accident and sickness insurance to calculate claim and contract reserves for health insurance policies issued prior to January 1, 2017 to either comply with the minimum requirements in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual (APPM) Appendix A-010 or the existing requirements set forth in s. Ins 3.17 (6) (b) or (8) (b), Wis. Adm. Code, respectively. Section 623.06 (8m), Stats., established s. Ins 3.17, Wis. Admin. Code, as the reserve standard for contracts issued after November 13, 2015 and prior to January 1, 2017, and the NAIC Valuation Manual as the standard for contracts issued January 1, 2017, or later. Section Ins 3.17, Wis. Adm. Code, does not currently authorize the use of the 2013 Individual Disability Income Valuation Table (IDIVT) and the 2012 Group Long-Term Disability Valuation Table (GLTDVT) for calculating disability claim reserves. Both the APPM and the Valuation Manual authorize the use of the updated tables.

Health claim reserves traditionally have been determined based on the incurred date of the claim and not the issue date of the policy. However, under the current Wisconsin requirements, if a new claim is made on a policy that was issued before January 1, 2017, the insurer would be required to use the reserve standard currently existing under s. Ins 3.17 (6) (b), Wis. Adm. Code, rather than the updated tables adopted by the NAIC. If a claim is made on a policy that was issued after January 1, 2017, the insurer would use the reserve standard based on the applicable new NAIC table. Therefore, two claims with the same incurred date would be valued in two different ways as a result of the policy issue date. To bridge this gap, the proposed rule will permit insurers to use either the NAIC APPM tables or the standard valuation calculation contained in s. Ins 3.17, Wis. Adm. Code, as appropriate, for claims and contract reserves related to the accident and sickness policies issued prior to January 1, 2017.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.

The Office held a public hearing on November 28, 2018. Notice was also published on OCI's website. No members of the public appeared at the hearing. The Office did receive one comment in favor of the Office promulgating the rule from counsel to the Wisconsin Council of Life Insurers during the open comment period. The comment provided only general support for the promulgation of this rule without specific comments related to drafting.

Comparison of similar rules in adjacent states as found by OCI:

- Illinois: 215 ILCS 5/223 (8), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC. IL Admin. Code title 50 §2004.10 permits the use of both the APPM and NAIC valuation manual.
- Iowa: I.C.A. § 508.36 (14) (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.
- Michigan: MI ST § 500.836b (1) (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.
- Minnesota: M.S.A. § 61A.25 Subd. 10 (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

An unintended consequence of the 2015 revisions to s. 623.06, Stats., is that companies that write disability insurance are unable to smoothly transition to the newest disability valuation tables. The proposed rule repairs that gap in the current regulatory structure. The regulatory approach provides flexibility to insurers in accounting for claim reserves on a consistent basis without any unnecessary differentiation based on the issue date of the underlying policy and promotes consistency with NAIC standards and with other states' regulations and laws.

Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses or in preparation of an economic impact analysis:

The rule is unlikely to have a significant impact on small businesses as the effect on calculated reserves is not expected to be material. The purpose of the changes is to create easier and more logical record-keeping and to promote consistency with the standards of other states.

Effect on Small Business:

The rule is unlikely to have any impact on small businesses as the insurers affected by the rule changes are larger businesses and the rule does not increase costs to the insurers that might have been passed through to small business or individuals.

Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the web site at: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting

Karyn Culver at:

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Email: karyn.culver@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

Place where comments are to be submitted and deadline for submission:

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. Additionally, the rule may be reviewed, and comments made at <https://docs.legis.wisconsin.gov/code> or sent to the following:

The deadline for submitting comments is 4:00 p.m. on the December 16, 2019.

Written comments can be mailed or hand-delivered to:

Julie Walsh
Legal Unit - OCI Rule Comment for Rule Ins xxx
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor

Madison WI 53703-3474

Email address:

Julie Walsh

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For additional information please contact Julie Walsh at (608) 264-8101 or at Julie.Walsh@wisconsin.gov.

The proposed rule changes are:

SECTION 1. Ins 3.17 (6) (b) (intro.) is amended to read:

Ins 3.17 (6) (b) ~~Minimum~~ Except as provided in par. (bm), minimum standards for claim reserves are as follows:

SECTION 2. Ins 3.17 (6) (bm) is created to read:

Ins 3.17 (6) (bm) 1. The minimum claim reserve standards for contracts issued prior to January 1, 2017, at the option of the insurer, shall be either the reserving requirements as set forth in par. (b), or the reserving requirements set forth in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, Appendix A-010.

2. The minimum claim reserve standards for contracts issued on or after January 1, 2017, shall be the standards set forth in the National Association of Insurance Commissioners Valuation Manual as defined in s. 623.06 (1) (j), Stats.

SECTION 3. Ins 3.17 (8) (b) (intro.) is amended to read:

Ins 3.17 (8) (b) ~~The~~ Except as provided in par. (bm), the basis for determining minimum standards for contract reserves are as follows:

SECTION 4. Ins 3.17 (8) (bm) is created to read:

Ins 3.17 (8) (bm) 1. The minimum contract reserve standards for accident and sickness contracts issued prior to January 1, 2017, at the option of the insurer, shall be either the reserving requirements as set forth in par. (b), or the reserving requirements set forth in the

National Association of Insurance Commissioners Accounting Practices and Procedures Manual, Appendix A-010.

2. The minimum contract reserve standards for contracts issued on or after January 1, 2017, shall be the standards set forth in the National Association of Insurance Commissioners Valuation Manual as defined in s. 623.06 (1) (j), Stats.

SECTION 5. EFFECTIVE DATE. This rule is effective on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register in accordance with s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 3rd day of June, 2020.

Mark V. Afable
Commissioner of Insurance